COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its Own Motion as to the Propriety of the Rates and Charges Set Forth in the Following Tariffs: M.D.T.E. Nos. 14 and 17, filed with the Department on December 11, 1998, to become effective January 10, 1999, by New England Telephone and Telegraph Company d/b/a Bell Atlantic Massachusetts

DTE 98-57

SURREBUTTAL TESTIMONY OF REBECCA SOMMI

ON BEHALF OF

AT&T COMMUNICATIONS OF NEW ENGLAND, INC.

November 5, 1999

1Q PLEASE STATE YOUR NAME, PRESENT POSITION AND BUSINESS ADDRESS.

A1. My name is Rebecca Sommi. I am employed by AT&T as the District Manager Negotiations -- Eastern Region for AT&T. My business address is 429 Ridge Road, Dayton, NJ 08810.

1Q ARE YOU THE SAME REBECCA SOMMI WHO ADOPTED A PORTION OF THE DIRECT TESTIMONY OF DAVID HIRSCH FILED ON BEHALF OF AT&T IN THIS PROCEEDING AND DATED JULY 26, 1999?

A1. Yes.

1Q ON WHOSE BEHALF ARE YOU SUBMITTING TESTIMONY?

A1. I am submitting this surrebuttal testimony on behalf of AT&T Communications of New England, Inc. and its affiliates (collectively "AT&T").

1Q WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?

A1. My surrebuttal testimony responds to certain assertions made by witness Amy Stern in her rebuttal testimony on behalf Bell Atlantic-Massachusetts ("BA-MA") dated August 16, 1999. Ms. Stern's testimony reinforces the anti-competitive dangers of Tariff No. 17, and why the Department should carefully review it to eliminate those effects.

1Q ARE YOU ABLE TO RECONCILE BA-MA'S RESPONSE TO INFORMATION REQUEST DTE-1-2, IN WHICH BA-MA STATES THAT TO THE EXTENT A CARRIER SEEKS IN THE FUTURE TO NEGOTIATE TERMS IN AN INTERCONNECTION AGREEMENT THAT DIFFER FROM THE PROVISIONS OF TARIFF NO. 17 (ONCE IT IS APPROVED) BA-MA BELIEVES IT CAN RELY ON THE TARIFF, WITH AMY STERN'S REBUTTAL TESTIMONY (PAGE 4-5) THAT THE TARIFF WILL NOT PRESENT A BARRIER TO CLECs TO NEGOTIATE OTHER TERMS?

A1. No. On the one hand, BA-MA says that it does not believe it is required to deviate from the "approved" terms of Tariff No. 17 in the event a CLEC seeks a different arrangement, and on the other hand claims that this is no obstacle to negotiating. The two notions are plainly in conflict.

1Q WHY IS THIS CONTRADICTION SIGNIFICANT?

A1. It signals to the parties and the Department BA-MA's intention to use its tariff to prejudice open and fair negotiation of future interconnection agreements. It suggests that BA-MA intends (where it serves BA-MA's purposes) to treat every tariff provision as if it were the equivalent to a Department arbitration decision on which BA-MA can insist, notwithstanding the fundamental procedural differences between a tariff filing and an arbitration proceeding. A tariff filing is not a contract negotiation, and should not be converted into one by anointing the approved tariff as if it were an approved interconnection agreement. It is vitally important in order to create a level playing field in future negotiations that the Department expressly rule that the mere fact that a provision appears in an approved tariff does not give it any precedential weight whatsoever in future negotiations or arbitration proceedings concerning interconnection agreements. Had Congress wanted to establish binding interconnection terms through administrative tariff filings, it would not have expressed in the Telecommunications Act of 1996 ("the 1996 Act") its strong preference for negotiated agreements.

1Q MS. STERN CLAIMS (AT PAGE 5) THAT IT WOULD BE AN "ADMINISTRATIVE BURDEN" FOR BA-MA TO EVALUATE HOW TARIFF CHANGES WOULD AFFECT INTERCONNECTION AGREEMENTS, AND THAT CLECs ARE BETTER SUITED TO DETERMINE THE IMPACT OF TARIFF CHANGES THAN IS BA-MA. DO YOU AGREE?

A1. No, requiring BA-MA to identify and give notice of tariff changes that it believes modify interconnection agreements is neither onerous nor more burdensome for BA-MA than for CLECs. The notice requirement would apply to those tariff changes that impact an arbitrated provision in a CLEC's interconnection agreement, consistent with the Department's ruling that tariff provisions can modify arbitrated provisions of an interconnection agreement. As discussed in the Direct Testimony of David Hirsch, AT&T urges the Department to reconsider that ruling because it adversely affects the ability of CLECs to conduct business planning, may prove extremely difficult for parties and the Department to apply, and fails to recognize the procedural differences between arbitration proceedings and tariff filings.

If the rule remains in effect, however, its adverse implications for CLECs (who do not control the tariff filing process) can be lessened by requiring BA-MA to give the CLECs notice, when tariff charges are proposed, of the changes that BA-MA believes will alter CLEC interconnection agreements. As noted in Mr. Hirch's direct testimony, such a notice procedure is proper because BA-MA is, by filing the tariff provisions, seeking reconsideration or modification of a Department arbitration ruling. The required notice is no more onerous for BA-MA, which will know just as well as CLECs what issues it arbitrated. It is, in fact, less onerous for BA-MA for a couple of reasons. First, as the proponent of a change, BA-MA will know better

than the CLECs what changes it is proposing. Second, as the proponent, BA-MA is in complete control of the timing of the tariff filing and can do all necessary analysis before it files, according to its own schedule and resource constraints. CLECs, by contrast, will need to complete an analysis of the tariff proposal and its relationship to any term in its interconnection agreement on a schedule determined by Bell Atlantic, the Department and statutory constraints. Should such an effort be imposed on a CLEC at a time when its resources and attention are required to be directed elsewhere, the burden might be prohibitive. In any event, BA-MA has proven in response to discovery from the Department in this case that it can compare its entire tariff to existing interconnection agreements. See DTE-BA-2-1. More limited tariff changes should prove considerably less burdensome for BA-MA to highlight for CLECs, where BA-MA is seeking to change (by tariff) an interconnection provision that it arbitrated.

CLECs, on the other hand, should be able to rely on Department arbitration decisions unless given notice that they may be changed. As BA-MA will be the party initiating the change, it should be the party to give proper notice - and not merely by serving new tariff provisions with no mention that they propose a change to a Department arbitration decision. Indeed, to the extent BA-MA fails to note that a proposed tariff revision will impact specific Department arbitration decisions, it should be prevented from later claiming that the tariff has in any way altered such arbitration decisions.

1Q ON PAGE 13 OF HER TESTIMONY, MS. STERN INDICATES THAT AT&T CAN CONSULT THE CLEC HANDBOOK FOR ANSWERS TO QUESTIONS REGARDING SERVICE ORDER REQUIREMENTS. DOES AT&T BELIEVE IT CAN RELY ON THE CLEC HANDBOOK TO FILL THE NUMEROUS GAPS IN THE TARIFF?

A1. No, because BA-MA has told AT&T that it cannot. In BA-MA's response to AT&T Information Request 6-22, BA-MA emphasizes that the terms of the CLEC Handbook are not incorporated into any tariff and do not amend the tariff. For Ms. Stern to point CLECs to the CLEC Handbook where Tariff No. 17 is silent, ambiguous or in need of elaboration is thus not an acceptable solution. BA-MA should not be permitted to rely on off-hand references to the CLEC Handbook to shore up its incomplete tariff. If BA-MA relies on terms of the CLEC Handbook to supplement its tariff, it should be required to include the relevant provisions of the CLEC Handbook in the tariff itself so that CLECs have some idea what provisions apply and can rely on them.

1Q ON PAGE 17, MS. STERN CLAIMS THAT AT&T AGREED TO LIST "Y2K ANOMALIES" IN THE FORCE MAJEUR SECTION OF THE TARIFF. DID AT&T SO AGREE?

A1. No. Mr. Hirsch addressed the issue of Y2K anomalies at page 7 of his direct testimony (which I have adopted). As stated there, BA-MA should not be excused from failure to make its systems Y2K compliant, and should be liable to the full extent of applicable law.

Ms. Stern incorrectly states that Mr. Hirsch failed to cite the "force majeur" provision of the tariff among those he recommended for change, but it is apparent that she believed he had. Ms. Stern's mistake, however, highlights a problem inherent in the review of a voluminous tariff - that if AT&T or other CLECs inadvertently overlook a provision due to the sheer volume of the tariff, BA-MA may seize upon the omission as an "agreement." This is precisely why the Department must be sure expressly to limit the precedential weight of individual tariff provisions. It is also a good example of why CLECs and others need an electronic copy of the tariff, so that term searches and similar time and labor saving functions can be performed when reviewing a voluminous tariff.

1Q DOES THIS CONCLUDE YOUR TESTIMONY?

A1. Yes.